

**ELLIOTT & ELLIOTT, P.A.**

**ATTORNEYS AT LAW**

1508 Lady Street  
COLUMBIA, SOUTH CAROLINA 29201  
[selliott@elliottlaw.us](mailto:selliott@elliottlaw.us)

SCOTT ELLIOTT

TELEPHONE (803) 771-0555  
FACSIMILE (803) 771-8010

August 29, 2014

**VIA E-FILING**

Jocelyn Boyd, Esquire  
Chief Clerk and Administrator  
South Carolina Public Service Commission  
101 Executive Center Drive  
Columbia, SC 29210

RE: Ken Bozeman-B2 Holdings, LLC, Complainant/Petitioner v. Carolina Water Service,  
Inc. Defendant/Respondent  
Docket No. 2013-71-WS

Dear Ms. Boyd:

Enclosed for filing please find the Motion to Dismiss filed on behalf of Carolina Water Service, Inc. and Certificate of Service in connection with the above-referenced matter. By copy of this letter I am serving all parties of record.

If you or counsel has questions, please feel free to contact me.

Sincerely,

Elliott & Elliott, P.A.



Scott Elliott

SE/lbk

Enclosures

cc: All Parties of Record w/enc.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2013-71-WS**

IN RE: Ken Bozeman – B2 Holdings, LLC    )  
      Complainant/Petitioner v. Carolina    )  
      Water Service, Inc.,                    )  
      Defendant/Respondent                 )  
  )

**MOTION TO DISMISS**

Carolina Water Service, Inc. (“Carolina Water”) hereby moves pursuant to S.C. Code Regs. R103-829 the Public Service Commission of South Carolina (“Commission”) to dismiss the February 25, 2013 Complaint of Ken Bozeman and B-2 Holdings, LLC in the above (“B-2 Holdings”) on the grounds that it fails to state facts sufficient to constitute a claim upon which relief may be granted.

**BACKGROUND**

On or about February 26, 2013, Ken Bozeman filed with this Commission a complaint that was assigned Docket No. 2013-71-WS. The complaint challenged the manner in which Carolina Water’s commercial sewer rates were designed. In particular, Carolina Water’s rates are based upon equivalencies established under the South Carolina Department of Health and Environmental Control (“DHEC”) guidelines found in Appendix A to R. 61-67. The rate design has been historically authorized for Carolina Water by the Commission, most recently by Order No. 2014-201 in Docket No. 2013-275-W/S. The complaint seeks to eliminate the use of DHEC guidelines as a basis of commercial sewer rates.

Carolina Water, the Office of Regulatory Staff (“ORS”) and Ken Bozeman have prefiled testimony. Because the Complainant B2 Holdings, LLC does business as a limited liability company, the Hearing Examiner issued a directive on March 28, 2013 holding the Complaint in abeyance to permit B2 Holdings to obtain legal counsel licensed in South Carolina to proceed with the Complaint. Subsequently, the Complainant retained Laura P. Valtorta, Esquire as legal counsel who entered an Appearance of Counsel April 22, 2013.

### **ARGUMENT**

The Complaint fails to state facts sufficient to constitute a claim upon which relief may be granted. The Complaint does not allege any fact demonstrating that Carolina Water has done anything prohibited by Commission Orders or regulation and thus, the Complaint fails to allege that Carolina Water has engaged in any conduct that would entitle the Complainant to relief. To the contrary, Carolina Water’s rates applicable to the Complainant’s premises conform in every respect with its Commission approved rate design.

The Complainant seeks now to collaterally attack the rate design approved in Order No. 2013-207 (as well as previous Commission orders approving rate design for Carolina Water based upon DHEC guidelines). However, the Complainant, as a Carolina Water customer, had actual and constructive notice of the utility’s 2013 rate application but failed to intervene to challenge the rate design requested and approved in Order No. 2014-207. The Complainant is familiar with Commission practice and was certainly in a position to contest Carolina Water’s rate design and to propose a rate design of its own. Having failed to do so, the Complainant cannot be permitted to collaterally attack rates that are valid on their face.

Further, Carolina Water's rates are in all respects just and reasonable and enforceable. The Commission acted within its discretion to approve Carolina Water's rate design based on the DHEC Contributory Unit Wastewater Loading guidelines set out in Appendix A 225 S.C. Code Regs. 61-67. In establishing rates it is incumbent to fix rates which fairly distribute the revenue requirements of the utility. *See Seabrook Island Property Owners Association v. S.C. Public Service Commission*, 303 S.C. 493, 499, 401 S.E.2d 672, 675 (1991). The Commission has determined that fairness with respect to the distribution of a utility's revenue requirement is subject to the requirement that it be based upon some objective and measureable framework. *See Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 113-114, 708 S.E. 2d 755, 764-765 (2011). The Supreme Court has approved the Commission's use of single family equivalents in the rate design for a sewer utility. *Seabrook Island Property Owners Association v. South Carolina Public Service Commission*, *supra*. The imposition of flat rates on commercial customers based on equivalency established under DHEC guidelines found in Appendix A 2R. 61-67 is both objective and measurable in that the rate design treats similarly situated commercial customers uniformly while recognizing that differences exist and pollutant strength of wastewater and the volume of wastewater flow. Moreover, the DHEC guidelines recognize that differences exist in the pollutant strength of wastewater and volume of wastewater flow between commercial and residential customers and accounts for those differences. *See Order No. 2013-660 in Docket No. 2013-42-S*.

Last, the Complainant seeks the ability to pay for a service received and to be received at a rate other than the previously approved rate in Order No. 2014-207. The relief

proposed by the Complaint constitutes retroactive rate making and cannot as a matter of law be granted by the Commission. See *SCE&G Co. v. Public Service Commission*, 275 S.C. 487, 272 S.E.2d 793 (1980) and S.C. Code Ann. §58-5-290.

### **CONCLUSION**

For the foregoing reasons, the Defendant respectfully request that the Complaint be dismissed.

Respectfully submitted,



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Scott Elliott, Esquire  
Elliott & Elliott, P.A.  
1508 Lady Street  
Columbia, SC 29201  
Phone: (803) 771-0555  
Fax: (803) 771-8010  
Email: [selliott@elliottlaw.us](mailto:selliott@elliottlaw.us)

Attorney for Defendant Carolina Water Service,  
Inc.

Columbia, South Carolina  
August 29, 2014

## CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Ken Bozeman-B2 Holdings, LLC, Complainant/Petitioner  
v. Carolina Water Service, Inc., Defendant/Respondent  
Docket No. 2013-71-WS

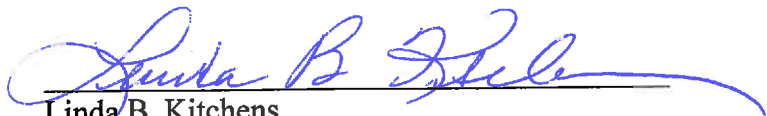
PARTIES SERVED:

Nanette S. Edwards, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201

Laura P. Valtorta, Esquire  
903 Calhoun Street  
Columbia, SC 29201

PLEADING: Motion to Dismiss

August 29, 2014

  
Linda B. Kitchens  
Legal Assistant